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## THE FOG OF WAR: CHECKS AND BALANCES AND NATIONAL SECURITY POLICY

KENNETH WARD\*

This Essay contends that the constitutional system of checks and balances distorts democratic deliberation about issues of national security by integrating questions of security within a broader policy agenda. The relationship between security and other issues creates incentives that make it less likely that officials will provide adequate information about the risks facing the nation and will, instead, encourage people to view security in partisan terms such that policies having little to do with security have undue influence on how we assess questions of security.

More particularly, the Essay uses the War on Terror to illustrate how checks and balances distort deliberation about security issues. It identifies political dynamics that would explain three shortcomings of public discussions of President Bush's security policies: (1) rather than specify Iraq's relationship to Islamic terrorism, President Bush has pointed to September 11th and the possibility of a nuclear Iraq to assert the high probability of additional attacks; (2) his opponents have sought to undercut public support for the Iraq War by emphasizing the policy's high costs without adequately addressing Iraq's relationship to Islamic terrorism; and (3) both President Bush and his opponents assume that the War on Terror warrants a considerable investment without clarifying the likelihood and magnitude of future attacks.

In the aftermath of September 11th, Democrats had to maintain a patriotic silence in order to sustain the appearance of bipartisan unity. This is not to say that Democrats did not want to support the President as he defended the nation from a clear attack. But they also recognized that the political strength that presidents gain when the nation unites has significant consequences for the broader partisan agenda because presidents can use this strength to advance controversial programs that have little to do with national defense.<sup>1</sup> And just as

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1. The popularity that a president tends to gain when the military is engaged overseas is a political resource that can be employed to advance interests that the president chooses

presidents might fight unjust wars to secure partisan ends, their opponents might challenge just wars for the same reason. We are all sensitive to the “wag the dog” problem, but it is easy to forget that tails wag in two directions.

Cynicism is bipartisan. If there is a temptation for one side to engage in cynical behavior, the other side will have incentive to anticipate such behavior and engage in cynical behavior of its own. The current political context invites such cynicism. It is easy to believe that (1) President Bush initiated the Iraq War in order to sustain the popularity he gained in responding to the September 11th attacks, and (2) Democrats are attacking his policies in order to reverse the recent partisan losses without regard to the dangers of Islamic terrorism. In so believing, we ignore important possibilities. President Bush might have had good, non-partisan reasons for fighting the war, even if the war also served partisan purposes, and his opponents might be right in concluding that the war is a bad policy, even if they do so for partisan reasons.

Cynicism, then, does more than express suspicion of why an official pursues what seems to be a bad policy; it also indicates a deeper problem. Putting motives aside, we do not have adequate information to assess security threats,<sup>2</sup> and the constitutional system of checks and balances gives elected officials various incentives to focus on the partisan implications of security policy.<sup>3</sup> As a consequence, people tend to assess security policy in light of its costs—especially the lost opportunity to pursue other political goods—without an adequate understanding of the threats themselves.<sup>4</sup>

This is not to say that people value other goods more than national security. We will see that although there are circumstances in which officials have reason to emphasize the high costs of security pol-

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to pursue. See PAUL BRACE & BARBARA HINCKLEY, *FOLLOW THE LEADER* 107 (1992) (discussing how the American public supports presidents when they use force abroad); Karl R. DeRouen, Jr., *The Indirect Link: Politics, the Economy, and the Use of Force*, 39 J. CONF. RES. 671, 672 (1995) (alleging that leaders may use force abroad to boost short-term public support at home); George C. Edwards III, *Aligning Tests with Theory: Presidential Approval as a Source of Influence in Congress*, 24 CONGRESS & THE PRESIDENCY 113, 126–27 (1997) (arguing that a president can use strong public approval to influence Congress); John E. Mueller, *Presidential Popularity from Truman to Johnson*, 64 AM. POL. SCI. REV. 18, 21 (1970) (describing how Americans typically rally behind the president after international crises); see, e.g., RICHARD E. NEUSTADT, *PRESIDENTIAL POWER: THE POLITICS OF LEADERSHIP* 104–05 (1960) (describing how a period of success during the Korean War momentarily created support for one of President Truman’s domestic policies).

2. See *infra* text accompanying notes 22–23.

3. See *infra* text accompanying notes 13–15.

4. See *infra* notes 24–25 and accompanying text.

icy, there are also circumstances in which they have reason to emphasize security threats.

To begin, we should not be surprised that the system of checks and balances encourages people to consider security in relation to other political goods. It is a structure of government that uses competition among factional interests to identify public goods that transcend those interests.<sup>5</sup> Each institution represents different constituencies and has various capabilities that allow it to block policies that conflict with the interests of these constituencies. Public goods, according to this view, are those that a broad consensus of people believes are consistent with their interests.

However, this system does not work well with security issues. People lack information about the nature and scope of the threats they face—information they must have if they are to effectively weigh security against other interests they might advance. Indeed, there would be no reason to put partisan differences aside and unite behind presidents when they defended the country if we knew that those presidents were pursuing security policies that were against our interests.

More particularly, given that people have limited information about the dangers they face, officials will want to avoid the perception that their policies put the nation at risk. If we imagine the set of all possible policy packages that officials might advance, each official has reason to choose from the subset of packages that include a security component that will make at least a majority of people feel protected. Officials will have incentive to distinguish themselves by (1) convincing people that their opponents' policies are outside of the subset of acceptable packages;<sup>6</sup> (2) favoring packages with security policies that

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5. Because political parties have become the primary means for advancing factional interests, I do not distinguish between factional and partisan interests. The problem I identify is a consequence of how the Constitution deals with factions and would continue to be a problem even if there were no political parties. It is the Constitution's design that gives officials incentive to build policy coalitions across issues.

6. Ronald Reagan, for example, was able to exploit the public's perception that the nation's defenses were in decline, even as President Carter maintained military expenditures at a level that matched a high rate of inflation. See Larry M. Bartels, *Constituency Opinion and Congressional Policy Making: The Reagan Defense Build Up*, 85 AM. POL. SCI. REV. 457, 461 (1991) (noting that a "pro-defense electorate" voted Reagan into office, and he accordingly increased defense spending); Thomas Hartley & Bruce Russett, *Public Opinion and the Common Defense: Who Governs Military Spending in the United States?*, 86 AM. POL. SCI. REV. 905, 911 (1992) (attributing the increase in defense spending during Reagan's presidency to public opinion); Robert Higgs & Anthony Kilduff, *Public opinion: a powerful predictor of U.S. defense spending*, 4 DEF. ECON. 227, 235 (1993) (concluding that presidents have some effect on molding public opinion regarding defense spending); Charles W. Ostrom & Robin F. Marra, *U.S. Defense Spending and the Soviet Estimate*, 80 AM. POL. SCI. REV. 819,

advance the interests of important constituencies;<sup>7</sup> and (3) favoring packages with non-security policies that advance the interests of such constituencies.<sup>8</sup>

These incentives create various political dynamics that influence the type of information people receive about threats the nation faces and tend to distort public deliberation about national security. This Essay will consider these dynamics in three different contexts: (1) the shorter term when the nation faces immediate threats; (2) an intermediate period in which those threats recede; and (3) the longer term in which people consider security policies more generally.

## I. THE SHORTER TERM: PRESIDENTS' INCENTIVES IN RESPONDING TO IMMEDIATE THREATS

In the face of immediate threats, presidents are uniquely situated to defend the nation.<sup>9</sup> Presidents have better information about the

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837–39 (1986) (demonstrating that an increase in American defense spending paralleled public concern that the Soviets were outspending the United States).

7. See Lawrence R. Jacobs & Benjamin I. Page, *Who Influences U.S. Foreign Policy?*, 99 AM. POL. SCI. REV. 107, 121 (2005) (using a recent study to argue that business interests have considerable influence on American foreign policy). During the early years of the Cold War, for example, Republicans and Democrats divided on the proper balance between nuclear and conventional forces, and this division corresponded to the interests of important constituencies. Benjamin O. Fordham, *Domestic Politics, International Pressure, and the Allocation of American Cold War Military Spending*, 64 J. POL. 63, 65–66 (2002).

8. Presidents have an incentive to advance the interests of constituents who are critical to their election. They might do so by advancing the interests of particular regions or interest groups that may influence the president's electoral chances. See Kevin B. Grier et al., *Electoral Politics and the Executive Veto*, 33 ECON. INQUIRY 427, 435 (1995) (concluding that presidents will allocate funds, make appointments, and enact "regulatory favors" according to electoral vote calculus); Nolan M. McCarty, *Presidential Pork: Executive Veto Power and Distributive Politics*, 94 AM. POL. SCI. REV. 117, 118 (2000) (noting that "the president specifically targets spending toward areas that are important for his reelection"). Constituents who believe that a president has advanced or will advance interests important to them are likely to support that president even when he or she pursues policies that those constituents consider less important. There is some evidence that people who identify with a particular party will switch policy positions as their parties do, especially when the issues are difficult. See Elisabeth R. Gerber & John E. Jackson, *Endogenous Preferences and the Study of Institutions*, 87 AM. POL. SCI. REV. 639, 654 (1993) (noting that institutions influence how people develop and maintain their policy preferences); Robert Y. Shapiro & Benjamin I. Page, *Foreign Policy and the Rational Public*, 32 J. CONF. RESOL. 211, 231 (1988) (explaining that when the Republican party policy towards the Soviets shifted from hostility to peaceful co-existence, Republican party identifiers provided substantial support throughout the shift); Shoon Murray, Research Note, *Turning an Elite Cross-Sectional Survey into a Panel Study While Protecting Anonymity*, 36 J. CONF. RES. 586, 586–88 (1992) (studying how certain Americans changed political perspectives after the Cold War ended).

9. John Mueller specified criteria for identifying events that correlate with people rallying behind the president. The events had to be international, directly involve the United States and the president, and be "specific, dramatic, and sharply focused." JOHN E. MUEL-

dangers people face and the resources necessary to respond. This would explain why people rally behind presidents who combat such dangers.<sup>10</sup>

Although presidents gain short-term popularity in responding to immediate dangers, this popularity is fleeting.<sup>11</sup> Sometimes the dangers themselves are fleeting and partisanship reemerges as ordinary politics return.<sup>12</sup> In this circumstance, the popularity presidents gain in defeating a threat is not enough to sustain a presidency.<sup>13</sup> Without the stimulus of an immediate threat, security becomes a more general concern. People will vote against presidents who they believe are not capable of defending the nation. However, they will otherwise assess presidents in light of broader political considerations, ensuring that a president's partisan agenda will have great consequences for his or her political fortune.<sup>14</sup>

On the other hand, presidents sometimes respond to immediate dangers that recede without being eliminated. Ordinary politics return as people become inured to lingering dangers, at which point there is likely to be partisan debate about particular policies that address those dangers. Because presidents lose popularity as they pursue extended conflicts,<sup>15</sup> they have reason to seek partisan support to help sustain their policies.

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LER, WAR, PRESIDENTS AND PUBLIC OPINION 209 (1973). For purposes of my analysis, there need not be a clear line to mark when an immediate threat begins to recede. The distinction is meant to identify conditions in which openly partisan criticisms of the president are likely to be efficacious.

10. See DeRouen, *supra* note 1, at 672 (noting that leaders can boost short-term public support by responding to crises abroad); Mueller, *supra* note 1, at 21 (discussing the "rally round the flag" effect that accompanies the president's response to major international events).

11. See DeRouen, *supra* note 1, at 672; Robin F. Marra et al., *Foreign Policy and Presidential Popularity*, 34 J. CONF. RESOL. 588, 619–20 (1990) (concluding that foreign policy action influences short-term support).

12. Examples include conflicts in the Persian Gulf War, Panama, Haiti, and Grenada. The immediate threat, therefore, need not be to the country as a whole.

13. See Mueller, *supra* note 1, at 21 (explaining that some threats do not create a rallying effect for the president because they do not hold the public's attention).

14. Some evidence suggests that when disagreement occurs over a president's policy, the policy's short term success can influence how people perceive the two parties over the longer term, including how the parties respond to potential threats. See, e.g., Barbara Norrander & Clyde Wilcox, *Rallying Around the Flag and Partisan Change: The Case of the Persian Gulf War*, 46 POL. RES. Q. 759, 768 (1993) (noting that the Republican Party gained support in 1991 partially because of President Bush's actions during the Persian Gulf War).

15. John Mueller, *American Public Opinion and Military Ventures Abroad: Attention, Evaluation, Involvement, Politics, and the Wars of the Bushes*, Address Before the 2003 Annual Meeting of the American Political Science Association (Aug. 13, 2003), available at <http://polisci.osu.edu/faculty/jmueller/APSA2003.PDF> (explaining that Americans are willing to abandon conflicts when the stakes seem unworthy of additional American lives).

While presidents have reason to formulate security policies with an eye to their partisan agenda, this does not mean that they exaggerate or manufacture threats in order to attract partisan support. But these partisan incentives lead presidents to take actions that make it difficult for people to fully understand the threats that face the nation. Consider two tendencies that may follow from these incentives.

First, rather than explain why a policy is appropriate given the nature or scope of a threat, presidents have reason to use the existence of the threat as a justification for the policy.<sup>16</sup> Actual justifications would legitimize public discussion of that policy. And while presidents can control such discussion in the shorter term, when a united people will punish openly partisan behavior, over time a president's justification is likely to become the subject of partisan debate.<sup>17</sup> As the threat recedes, a president's opponents can distinguish themselves on security issues by attacking particular security policies. And detailed policy justifications expose presidents to these attacks.

Moreover, presidents who anticipate the return of partisan politics will want to avoid wasting political resources on a policy that will already have broad support. They will, instead, use these resources to build alliances to help them stay in office and increase their power.<sup>18</sup>

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[hereinafter American Public Opinion and Military Ventures Abroad]; John Mueller, Fifteen Propositions about American Foreign Policy and Public Opinion in an Era Free of Compelling Threats, Address Before the National Convention of the International Studies Association (Apr. 16–20, 1996), *available at* <http://polisci.osu.edu/faculty/jmueller/isa1996.pdf> (suggesting that Americans become concerned with international issues only briefly after a crisis or threat) [hereinafter Fifteen Propositions]. Mueller's examples include the Korean and Vietnam Wars. But Mueller notes that presidents can pursue an extended engagement, such as a peacekeeping mission, so long as the costs remain low. For Mueller, casualties are the most significant cost. *See* Public Opinion and Military Ventures Abroad, *supra*, at 11–12.

16. Some events seem to speak for themselves. The Soviet Union's explosion of a nuclear bomb, Berlin blockade, and invasion of Czechoslovakia hardened public opinion in favor of the Cold War. Shapiro & Page, *supra* note 8, at 225. And later events such as the Soviet invasion of Afghanistan and the Iranian Hostage Crisis created a similar sentiment for strengthening national defenses. *Id.* at 242.

17. Posner and Vermeule identify strategies that well-meaning executives can use to increase their credibility when they act in the name of emergencies and national security. Eric A. Posner & Adrian Vermeule, *The Credible Executive* (John M. Olin Law & Economics Working Paper No. 309, 2006), *available at* <http://www.law.uchicago.edu/Lawecon/index.html>. But there is a deeper structural problem in that security policies will be associated with broader policy agenda whether or not those policies are well motivated, and people will have an incentive to assess those policies in partisan terms, even if they believe them to be well motivated. As a consequence, well-motivated presidents still have reason to invest political resources in building partisan support for their policies rather than in convincing people of their good intentions.

18. *See supra* note 8.

By advancing a partisan agenda, they give people a greater stake in their presidencies, making it easier to sustain their policies.

And this suggests a second tendency that distorts public understanding of threats to the national security: as a president's security policy becomes part of a broader policy agenda, it becomes difficult for people to disentangle the policy package and consider a particular security policy on its own merits, a difficulty that is compounded when a president has not provided an adequate policy justification. This is not to say that partisanship will make it impossible for people to detect flawed or failed security policies.<sup>19</sup> But their stake in a president's success will lead them to be more favorably disposed toward those policies<sup>20</sup> than they otherwise would, or in some circumstances support those policies in order to preserve the president's strength to fight other partisan battles.

President Bush has used each of these strategies to sustain support for the Iraq War. Rather than discuss the nature of the threat posed by terrorism and Iraq's relationship to that threat, he sought to associate people's recent experience of a terrorist attack with an unstable dictator who was either pursuing or likely to pursue weapons of mass destruction.<sup>21</sup> He had reason to pursue this course, given the nature of the evidence necessary to justify the Iraq War and the weakened position of his political opponents.<sup>22</sup>

The link between Iraq and the War on Terror seems to follow from inferences we might draw about (1) the relationship of instability in the Middle East to Islamic terrorism, (2) the relationship of Iraq

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19. People also switch their partisan affiliation in response to changes in how they perceive the parties. Richard A. Brody & Lawrence S. Rothenberg, *The Instability of Partisanship*, 18 BRIT. J. POL. SCI. 445, 464–65 (1988).

20. See Larry M. Bartels, *Beyond the Running Tally: Partisan Bias in Political Perceptions*, 24 POL. BEHAV. 117, 138 (2002) (concluding that partisan bias in political perceptions reinforces and perpetuates differences in opinion between Republicans and Democrats) [hereinafter *Beyond the Running Tally*]. There is some evidence that partisans will switch positions as their parties do, especially when the issues are difficult. See Gerber & Jackson, *supra* note 8, at 654; Murray, *supra* note 8, at 587; Shapiro & Page, *supra* note 8, at 231.

21. See BRUCE ACKERMAN, BEFORE THE NEXT ATTACK 16–17 (2006) (explaining that President Bush successfully framed the Iraq War as another battle in the ongoing War on Terror to gain support from the public and Congress); Press Release, Office of the White House Press Secretary, President Bush Announces Major Combat Operations in Iraq Have Ended, available at <http://www.whitehouse.gov/news/releases/2003/05/20030501-15.html> (framing the battle in Iraq as a key part of the ongoing War on Terror).

22. President Bush's opponents were weakened because an attack against the country is the type of event that unites people in the belief that a response is necessary and that it is the president who is responsible for directing the response. See Shapiro & Page, *supra* note 8, at 233–36 (discussing how various wars united support behind the president). Indeed, the Iraq War is the type of event from which presidents derive a rallying effect. See MUELLER, *supra* note 9, at 209 (discussing the qualities of a rallying event).



to instability in the Middle East, and (3) the relationship of Iraq to Islamic terrorism. The justification for war in Iraq, according to this view, would depend on how these relationships influence the physical and economic security of the United States. A reasonable assessment would require a detailed understanding of how Saddam Hussein's regime contributed to Middle Eastern instability, including what we might have expected from an Iraq that, while significantly weakened, had begun to escape the shackles put in place after the first Iraq War.

More significantly, we should recall that in the aftermath of September 11th the Democrats were in a weak position to challenge the War on Terror, and the best they could do was to question the strategies used to prosecute it.<sup>23</sup> By offering a detailed policy justification, President Bush would have invited public discussion that would make his policy a legitimate subject of partisan debate.<sup>24</sup> And such a debate would have diverted the resources he could otherwise use to advance the interests of constituencies that might play an important role in his reelection and help him to sustain his policy.

## II. THE INTERMEDIATE PERIOD: PARTISANSHIP RETURNS IN THE WAKE OF A RECEDING THREAT

Although there will be a different political dynamic as an immediate threat recedes and the danger becomes more speculative, it is a dynamic that reinforces the two problems associated with the earlier time: (1) security policies are not adequately justified, and (2) people

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23. See MUELLER, *supra* note 9, at 208 (explaining that people rally around the executive in response to a foreign policy crisis). Almost seven years after the attack, we still see evidence of this weakness. For example, when John Edwards recently criticized the War on Terror, saying it has amounted to nothing more than a slogan, he spurred debate among leading candidates for the presidential nomination of the Democratic Party. Michael Cooper & Patrick Healy, *Is the U.S. Safer Since 9/11? Clinton and Rivals Spar*, N.Y. TIMES, Jun. 6, 2007, at A1. While candidates disagree about whether the country is safer and who is responsible for the country being safer, they did not discuss whether there was a need for a major policy initiative to make the country safer or the exact nature of the threat we face. The candidates seem to take it as given that there is a problem that the Bush Administration should have responded to, and the debate seems to be about the adequacy of the policies that responded to that threat. *Id.*

24. See Charles W. Ostrom & Dennis M. Simon, *The President's Public*, 32 AM. J. POL. SCI. 1096, 1101 (1988) (explaining that partisanship influences citizens' view of presidential decisions); see also Douglas A. Hibbs, Jr., *The Dynamics of Political Support for American Presidents Among Occupational and Partisan Groups*, 26 AM. J. POL. SCI. 312, 322-24 (1982) (discussing the partisan response to the Vietnam War and its negative effect on President Johnson's approval ratings). There is a deep partisan divide over both the Iraq War and the Bush presidency, although the divide narrowed considerably after the September 11th attacks. John Mueller, *The Iraq Syndrome*, 84 FOREIGN AFF. 44, 49 (2005). President Bush, therefore, had reason to frame the policy as a response to terrorism so as to dampen partisan criticism and, to a considerable extent, this tactic succeeded.

have reason to consider them as part of a broader policy package. The absence of an adequate justification would explain why people focus on the costs of security policies both in lives and resources.<sup>25</sup> Moreover, by linking particular security policies to a partisan agenda, presidents invite people to consider those policies in light of their opportunity costs<sup>26</sup>—whether the resources invested in those policies would be better invested elsewhere.<sup>27</sup> Countervailing political forces should move the status quo towards a policy package that encompasses a broader range of interests, as those left out of the incumbent president's coalition pursue policies that take better account of their interests.<sup>28</sup>

A president's opponents will challenge particular security policies in a way that would not be tolerated while the nation was in immediate danger, and many people will assess these challenges in partisan terms.<sup>29</sup> While those with a stake in the president's success will be more receptive to his or her arguments, or will have some reason to favor policies they would otherwise believe unjustified, there is likely

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25. See Fifteen Propositions, *supra* note 15 (explaining that Americans assess the probable and potential American casualties when evaluating a war); Miroslav Nincic, *Domestic Costs, the U.S. Public, and the Isolationist Calculus*, 41 INT'L. STUD. Q. 593, 606–07 (1997) (concluding that the public weighs opportunity cost when making foreign policy evaluations).

26. See Nincic, *supra* note 25, at 606–07.

27. The claim about the distribution of costs is not limited to monetary losses. For example, we know that strong proponents of a woman's right to choose are likely to vote against Republicans, and the association of the Iraq War with the Republicans' domestic agenda will lead them to focus on the immediate costs of the war and reject the policy package as a whole. Although some might support the war if it were associated with different domestic policies, this is not likely given the nature of our two-party system. The salience of a war makes it difficult to disassociate the war from the president who chooses to fight it. In this circumstance, people would have reason to view the President's ability to advance his domestic agenda as a cost of the war. In 2004, for example, pro-choice voters who supported the Iraq War should have known or even knew that supporting the war increased the likelihood that President Bush would be able to appoint pro-life judges.

28. My argument resembles Almond's criticism of a fickle public that overreacts to immediate events and then loses interest in international affairs once those events recede. See generally GABRIEL ALMOND, *THE AMERICAN PEOPLE AND FOREIGN POLICY* 53 (7th ed. 1967) (exploring how various segments of society react to foreign policy). But this is only a superficial resemblance. I do not argue that the public loses interest in international events or that it assigns too much weight to domestic affairs. My argument is consistent with the considerable literature that refutes Almond, including Shapiro and Page's claim that the public is not capricious, but acts rationally given the information that it has received. Shapiro & Page, *supra* note 8, at 243. I attribute the inadequacy of this information to incentives created by the system of checks and balances. These same incentives explain the findings of both Mueller and Nincic, each of whom claims that the public assesses security policies based on the costs of those policies. See *supra* note 25.

29. See Ostrom & Simon, *supra* note 24, at 1101 (explaining that a president's opponents normally view the president's actions through a skeptical lens).

to be a large number of people who would prefer a different policy package. This is because by initiating security policy, presidents form narrower coalitions than would have arisen if the same policy had been initiated by Congress.

Recall that the system of checks and balances is committed to broad-based policy making. The legislative process reflects this commitment in that it contains various veto points at which people can block policies that threaten their interests, thus broadening public support for government policy. Presidents avoid this process when they initiate security policy. Legislators, as a consequence, do not have an opportunity to block a president's policy that would negatively impact programs that are important to particular constituencies. Given that major policy legislation tends to require broader support than it takes to elect a president,<sup>30</sup> it is likely that Congress would not approve such a policy unless it were part of a different policy package. For example, once people have a clearer sense of both the costs of a security policy and also the distribution of those costs, namely the cuts in government programs necessary to pay for the policy, a coalition of interests would likely form to defeat the policy package containing the president's security policy.

In these circumstances, it seems that presidents would have an incentive to bring forth more information to justify their policies. But such information is likely to be less effective rhetorically than a renewed appeal to people's fleeting memory of a past but very real danger. The problem is that any justification would be speculative in that the danger might never arise again or that it will have a disproportionate effect on some people over others—younger people, for example, would be far more likely to suffer than older people. By contrast, a president's opponents could point to the immediate costs of the policies that combat a potential danger.

Consider an analogous case: the government's difficulty in responding to impending environmental catastrophes. In the absence

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30. See R. DOUGLAS ARNOLD, *THE LOGIC OF CONGRESSIONAL ACTION* 117–18 (1990) (explaining that large legislative majorities are necessary to overcome majoritarian tests); KEITH KREHBIEL, *PIVOTAL POLITICS* 5–6 (1998) (noting that winning legislative coalitions are normally larger than the minimum votes necessary to win). This argument assumes that initiating armed conflict is analogous to issuing executive orders, as both are methods that presidents may use to set policy in a manner that circumvents the legislative process. Deering and Maltzman have found that presidents can successfully pursue this strategy as long as the legislature is sufficiently divided so that the opposition cannot build the supermajority necessary to override a president's veto. Christopher J. Deering & Forrest Maltzman, *The Politics of Executive Orders: Legislative Constraints on Presidential Power*, 52 *POL. RES. Q.* 767, 777–78 (1999).

of immediate experience, it is hard for people to grasp good evidence about the likelihood of disaster, especially when many people have reason to think they can avoid the danger.<sup>31</sup> And though immediate weather events—such as a recent trend of stronger and more frequent storms—have limited evidentiary value, they are more likely to convince people of the dangers of global warming than scientific accounts of a looming environmental calamity, and this continues to be the case even as the memories of those events fade.<sup>32</sup> The problem is further complicated because those with interests opposed to remedial policies have both the incentive and the ability to make the costs of those policies clear.<sup>33</sup>

This is not to say that a president's policy is deficient because it lacks the broader support demanded by the system of checks and balances. Indeed, our instinct to unite behind presidents in the face of danger suggests that we value security more than other goods and thus have reason to consider security policy in isolation from partisan interests. And one reason to do so is that our deliberations about security become distorted when people receive better information about the costs of particular policies than the dangers those policies seek to address.

We see this problem as Democrats challenge President Bush's policy in Iraq. Recall that the September 11th attacks placed the Democrats in the position of a loyal opposition.<sup>34</sup> To regain power, they had to wait for the President to make a mistake in prosecuting the war or for the return of ordinary politics, a time when they could win elections by distinguishing themselves from Republicans on issues not related to security. President Bush, therefore, had reason to avoid a detailed justification for the Iraq War. Such a justification would legitimate partisan discussion of security policy and thereby divert political resources from partisan ends that would, over the longer term, strengthen his presidency and thus help sustain a broader political agenda that included the Iraqi policy itself.

Time has proved that President Bush needed partisan support to sustain what has been a costly policy. Democrats have made gains by

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31. Sheldon Ungar, *The Rise And (Relative) Decline Of Global Warming As A Social Problem*, 33 SOCIOLOGICAL Q. 483, 488–89 (1992).

32. *Id.* at 996–97.

33. Center for Responsive Politics, Oil & Gas: Long Term Contribution Trends, <http://www.opensecrets.org/industries/indus.asp?Ind=E01> (reporting that oil and gas companies donated almost twenty million dollars to political candidates during the 2006 election cycle and over twenty-five million during the 2004 cycle).

34. Christopher Marquis, *The War Wagon: Democrats Play the Loyal Opposition*, N.Y. TIMES, Sept. 22, 2002, at D5.

emphasizing these costs, and we see that, to a considerable extent, people's assessment of the policy corresponds to their partisan preferences.<sup>35</sup> More significantly, while the 2006 election looked as if it would mark the beginning of the end of the Iraq War<sup>36</sup> and perhaps also reverse whatever partisan advantage President Bush was able to secure from the policy, we should consider how much our deliberations have been shaped by the costs of the policy and how little attention we pay to the relationship among events in Iraq, instability in the Middle East, and the threat of Islamic terrorism.

It would seem that President Bush would have had greater incentive to justify the Iraq War as the costs of his policy mounted, but we can see why he would avoid making his justification a subject for debate. Our struggles with environmental policy suggest that convincing evidence has much less influence when processed through a partisan filter,<sup>37</sup> and, by its nature, the evidence that would support the Iraq War is much more speculative than the evidence about environmental dangers.<sup>38</sup> Rather than probabilities derived from facts, we are faced with competing interpretations of history.

In our current situation, both Republicans and Democrats are likely to view the justification through partisan lenses, given that they are interested interpreters of such evidence. Democrats, however, have an advantage in making their case to non-partisans; they can point to high costs that are readily apparent, while Republicans can offer only theoretical conclusions about highly contestable evidence. Moreover, the September 11th attacks continue to be a significant, though receding, presence in the public psyche. President Bush seems to have decided to avoid a debate that will bring added attention to a costly policy. This strategy will prove sound if divisions among the electorate and the partisan gains of the past six years help him to sustain the policy.

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35. See Ostram & Simon, *supra* note 24, at 1101.

36. The Democrats' victory is widely seen as a rejection of President Bush's policy. Alan Cowell, *Reactions From Abroad Set Conciliatory Tone, Seeing Vote as a Protest to Iraq Policy*, N.Y. TIMES, Nov. 9, 2006, at A29; Adam Nagourney, *Narrow Victory by G.O.P. Signals Fall Problems*, N.Y. TIMES, Jun. 8, 2006, at A1; Sheryl Gay Stolberg & Mark Mazzetti, *Democrats Push for Troop Cuts Within Months*, N.Y. TIMES, Nov. 13, 2006, at A1. This is not to say, however, that President Bush will not be able to sustain the war in the short run or in the longer run if he is able to significantly reduce the number of American casualties. See Fifteen Propositions, *supra* note 15, at 7 (finding that public support is a function of American casualties).

37. See *Beyond the Running Tally*, *supra* note 20 (explaining that partisan bias affects how people interpret information).

38. See *supra* text accompanying notes 22–23.

### III. THE LONGER TERM: OVERINVESTMENT IN GENERAL SECURITY POLICY

The Democrats have challenged the Iraq War by pointing to the high costs of President Bush's policy.<sup>39</sup> By contrast, they have done comparatively little to challenge his decision to fight a war against terrorism, and the lack of discussion of this more general policy commitment is noteworthy. It is indicative of a third political dynamic that characterizes longer-term security policy: checks and balances create an institutional bias that leads partisans of all stripes to spend too much money on national security.

In the absence of information about the immediate costs of a particular security policy, it becomes harder for people to see the trade-offs between the resources allocated to security and those allocated to other political goods. People know that savings from security can be used to advance other interests, but they disagree about how to distribute those savings. More significantly, people also believe that other government programs should be cut before security, though they disagree about which programs to cut.

As a consequence, proponents of defense spending can focus the debate on the narrower question of which programs should be cut before security and thereby avoid the broader question of whether we are spending too much on security and whether we would be better off redistributing money from security to other programs.<sup>40</sup> This strategy is made more effective because politicians can use real—if uncertain—threats to reinforce people's tendency to support security expenditures, and can point to the absence of an immediate threat to prove the efficacy of existing security policy.

Moreover, both presidents and legislators have incentive to over-value security. Presidents have institutional reasons to be risk averse because they play a primary role in formulating and implementing security policies and voters hold them responsible for those policies.<sup>41</sup>

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39. See Carl Hulse, *Democrats Step Up Attacks on Iraq War*, N.Y. TIMES, Sept. 25, 2003, at A10 (reporting Democrats' criticism of the monetary costs of the Iraq War); Jeff Zeleny & Michael Luo, *A Divided House Denounces Plan for More Troops*, N.Y. TIMES, Feb. 17, 2007, at A1 (reporting on the formal resolution the House of Representatives passed that criticized President Bush's decision to send additional combat troops to Iraq, partially based on the cost of the war).

40. This would explain Russett's finding of few tradeoffs between military spending and expenditures on domestic programs. Bruce Russett, *Defense Expenditures and National Well-being*, 76 AM. POL. SCI. REV. 767, 774–75 (1982).

41. See Tom R. Tyler, *Personalization in Attributing Responsibility for National Problems to the President*, 4 POL. BEHAV. 379, 394–95 (1982) (finding that people attribute personal responsibility to the president for national problems).

While legislators will seek to avoid a reputation for being weak on security,<sup>42</sup> they also have partisan reasons for supporting the security choices that presidents make. Presidents have considerable influence over the national policy agenda and can link their security policies to partisan goods that have great significance to legislators' reelection, such as defense contracts that favor industry in a particular district.

Over time, therefore, the dynamics of elections should create upward pressure on security spending.<sup>43</sup> We have seen that presidents and presidential candidates have an incentive to choose from the set of policy packages that will not make them vulnerable to attack for being weak on security.<sup>44</sup> But that set is likely to be fluid given that there will be times in which presidential candidates can identify plausible threats to justify policy packages weighted more heavily to security. In so doing, they place their opponents in the difficult position of having to prove the absence of danger or risk being perceived as weak on security. While these opponents are likely to reject the new policy package, they will want to undercut the distinction that other candidates are trying to draw and will do so by advancing policies that invest more in security than the policies they otherwise would have favored. At this point, presidents will have to choose from a set of policy packages that is more heavily weighted to security than the original set.

Consider again how deliberations about the Iraq War have been characterized by almost no detailed discussion of the nature of the threat terrorism poses or how it compares to other dangers the government might address.<sup>45</sup> In challenging President Bush's policies, the Democrats have questioned the Iraq War and some limited costs associated with the broader War on Terror, such as particular policies relating to domestic surveillance.<sup>46</sup> But Democrats have shown little inclination to question the need for a war on terrorism as a response

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42. See, e.g., Bartels, *supra* note 6, at 461 (noting that when President Reagan requested Congress to appropriate twenty-six billion dollars more to defense than President Carter requested, Congress responded by exceeding President Reagan's request).

43. This is not to say that defense spending will never go down. Events such as the collapse of the Soviet Union or the end of the Vietnam War led to periods in which people's perception of external dangers resulted in downward adjustments in defense spending.

44. See, e.g., Richard W. Stevenson, *Bush Attacks Kerry as Weak on Security*, N.Y. TIMES, Oct. 23, 2004, at A13.

45. American Public Opinion and Military Ventures Abroad, *supra* note 15, at 6 n.8 (noting the lack of any comparative calculus of the danger terrorism poses after 9/11 and citing a study finding that the chance of being killed on a non-stop flight is about one in 13 million, while to reach the same level of risk while driving, one would only have to travel 11.2 miles).

46. See David Johnston & Michael Janofsky, *Defending a Program and His Reputation*, N.Y. TIMES, Feb. 5, 2006, at A24.

to the September 11th attacks, even though this is a war that will entail significant costs for the foreseeable future.<sup>47</sup>

It would be surprising if either Democrats or Republicans did so. In challenging the War on Terror, politicians would have to make contestable and speculative arguments. In so doing, they would expose themselves to opponents eager to emphasize the high costs of terrorism to a risk-averse electorate. Indeed, we already know that they will draw on the example of September 11th to do so and will give little or no explanation of why they think a similar or more dangerous attack is likely. Moreover, given the likelihood that there will be terrorist attacks regardless of the security policy officials implement, all officials have an incentive to appear aggressive in combating terrorism—if only to inoculate themselves against future attacks from partisan opponents. There will always be ambitious politicians willing to reinforce people's fears by encouraging doubt about the adequacy of existing security measures. As a consequence, we should expect officials to remain bullish on the War on Terror. But it will be surprising if they justify the investment.

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47. See Cooper & Healy, *supra* note 23. Balkin and Levinson contend that there is a bipartisan view of what they call the National Surveillance State that they believe is a response to terrorism, but also derives from social forces that pre-date 9/11. Jack M. Balkin & Sanford Levinson, *The Processes of Constitutional Change: From Partisan Entrenchment to the National Surveillance State*, 75 *FORDHAM L. REV.* 489, 532–33 (2006). My argument identifies structural phenomena that explain this tendency.